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JURISDICTION IN RESPECT OF LIMITATIONS IN SALE OR USE OF PATENTED ARTICLES.

A federal judge, after reading what we said in 74 Cent. L. J. 223, 241, writes us that it will be found upon examination that none of the decisions to which the Chief Justice refers in his dissent in Henry v. Dick Company "dealing with the contract remedy have any bearing whatever on the questions involved in Henry v. Dick Company, 32 Sup. Ct. 364, and no expressions in the opinions therein in relation to such remedy are relevant on the question as to whether the federal courts have jurisdiction of suits for infringement of the patent in exceeding the rights covered by the license."

This learned judge further says: "The sole effect of such express contract is to afford a remedy for breach of the contract in the state courts, and for which breach no suit can be maintained in the federal courts without the requisite diversity of citizenship."

We would not state the matter in that way. We think it more in accordance with legal principle to say, that an express contract in respect to the use or sub-sale of a patented article is within the ordinary jurisdiction of a state court and the federal court may also adjudicate thereon when there is the requisite diversity of citizenship.

In our way of stating the matter there is, *ab initio*, a predisposition to the thought to regard the origin of violation as in and of that of which the state, and not the federal, court takes cognizance as subject-matter of jurisdiction. The learned judge must admit that this subject-matter pertains to the state court, because he concedes that for breach of the contract there must be requisite diversity of citizenship for a federal court to adjudicate thereon.

He insists, however, as we gather him and the cases to which he kindly refers us, that the principle is applicable when the action is upon contract and it is not applicable when one sues for an "infringement of the patent in exceeding the rights covered by the license."

Very respectfully we urge that here is a *petitio principii*—a begging of the question. Is there an infringement of a patent when you step outside of the provisions of an express contract limiting the use to which a patented invention may be put?

Let us see how this works out practically. A has an express contract with B, a patentee, that he will use his patented invention only in connection with certain unpatented articles to be purchased of B. Without such restriction in contract, A could do the forbidden things. He oversteps the line defined by the express contract. As long as he remains within that line he is guilty neither of any breach of contract nor of any infringement of the patent.

But when he oversteps the contract line, according to our learned correspondent, the patentee has an election to say he has committed a breach of his contract, or to say he has committed a tort in infringing a patent. If he elects to say the former, the subject-matter of suit is exclusively, as subject-matter, of state jurisdiction. If he elects to say the latter, none but a federal court may dispose of the case.

In both of these events the contract hedges plaintiff's rights and approves or denies defendant's defense. It is primarily the thing to be enforced. The patent is only secondarily involved as or not supplying a legal basis for the contract. That is a matter of defense the same as where any other contract is assailed, as, for example, being without consideration or as being part and parcel of a transaction condemned by public policy.

The learned judge says the decisions referred to by the Chief Justice have no relevancy to such a *remedy* as was resorted to in Henry v. Dick Company. Yet in Keeler v. Standard Folding Bed Co., 157

U. S. 659, one of those cases, it was said: "Whether a patentee may protect himself and his assignees by special contracts brought home to the purchaser is not a question before us and upon which we express no opinion. It is, however, obvious that such a question would arise as a question of contract and not as one under the inherent meaning and effect of the patent laws."

Our learned correspondent says, in effect, yes, if the patentee elects to "protect himself" by an action for breach of contract, but not if he elects to sue in tort, because the purchaser has infringed the patent by breaching his contract, for certainly he does not infringe the patent if he does not breach his contract.

Therefore, how is there less of the obviousness referred to, whether the form of action be in tort or on contract?

Possibly it might be true, that a purchaser might be an infringer in the doing of something to which the contract does not refer.

For example, if by contract he agrees not to use an unpatented article not bought from the patentee, he keeps his contract as to every patented article he buys, but, independently of the contract, he manufactures and sells the patented article itself.

Whatever by contract he agrees specifically not to do, and which otherwise would constitute no infringement, certainly has reference not to the patent but to the contract.

Suppose, for example, as to one of these latter things, a claim for infringement is made. What would be looked to to ascertain, if there were any default? If the plaintiff sued in tort, could he state a case without reliance on the contract?

At all events, federal courts go no further than to assert a double remedy, and they must admit that the adoption of one is exclusive of the other. It were something anomalous to say that subject-matter is so inherently different in two forms of action, that a state court can have no jurisdiction in one case and the federal court no jurisdiction, as such, in the other, and yet the bringing of one of these actions is a conclusive election between the two.

If it is true, however, that this is so, then we learn further how intensely artificial and unmeritorious, generally, is all jurisdiction of our federal courts, wherever private right is the subject-matter of their consideration.

In Bement v. National Harrow Co., 186 U. S. 70, we learn that sales of patented articles may not be so conditioned that they may either override police regulations or interfere with the duty that a public utility owes to those entitled to be served by it. And from this we understand that, if a special contract does thus interfere, it will be held that the sale or use contracted against is no infringement, and release to the utility is not thereby restricted.

In many states all forms of action are abolished and the claim of relief is based upon a plain statement of the facts constituting the cause of action. Federal courts entertain suits under the conformity act, but they allow a form of action resorted to, or a mere allegation of what this plain statement means, to sustain or destroy their jurisdiction.

This scarcely seems a sound reason for the right to adjudicate or not upon a controversy and places these courts upon no very enviable pedestal.

It is certain that a purchaser to whom notice of restriction is brought home may, except as is stated in the Bement case, be sued in contract. It is also certain that in the instances mentioned in the Bement case, whether purchaser is notified or not, there is no infringement of the patent. Does it not also seem right to say there is no infringement as to anybody who, without notice, goes beyond the restricted limits of a contract? Is not this the reason why it is attempted to affect purchasers by the giving of notice? This notice question is what the Keeler case seemed to feel a doubt about, when it spoke in the following sentence about what was "obvious."

NOTES OF IMPORTANT DECISIONS

RES IPSA LOQUITUR—PRIMA FACIE LIABILITY TRACED BACK BY PROCESS OF ELIMINATION.—The ordinary rule in applying the maxim *res ipsa loquitur* is in holding one *prima facie* negligent, who has control in management of that which does damage to another as to whom the former is under a duty to prevent such result.

But this kind of application would not cover the case of a manufacturer putting upon the market an article dangerous from a concealed defect at the time it has come through several intermediaries to the ultimate purchaser.

The Georgia Court of Appeals conceding, for the sake of argument that the present or at least the next present possessor of the dangerous article is the one to whom inferential negligence may be imputed, illustrates how this may be traced back, by a sort of shifting by plaintiff himself, as follows: "If a manufacturer should sell to a jobber a gun, and after passing through the hands successively of the wholesaler and retailer, it finally reaches the marksman, and explodes in his hands while being used in the ordinary and usual manner, and injury results, it is plain that there was a defect in the gun. Somebody ought to be responsible. Concede that inferentially it could be said that the marksman must have done something to the weapon to cause it to explode, if he disproves this, and the retailer, the wholesaler and the jobber all in turn show that they kept and handled the gun in the usual way and did nothing to change its condition, the inference of negligence would be shifted back upon the manufacturer, who put the weapon of destruction in circulation with his indorsement, that when used in the ordinary and usual manner, no harm would come to him who used it. In such a case it would be no answer, when the maxim the thing spoke for itself, is invoked, to say that when the injury resulted, the thing was not in the possession, power or control of the manufacturer." Payne v. Rome Coca-Cola Bottling Co., 73 S. E. 1087.

This case suggests need of enlargement of the usual formulation of the rule in respect to the maxim, but to embrace the extension the learned court suggests considerable difficulty in the way of necessary proof. To trace back in the way the court suggests resembles very much the difficulty shippers formerly experienced in fixing liaiblity on one of several connecting carriers.

Take the court's illustration. A gun is put upon the market. The manufacturer does not intend or expect it will be used by wholesaler or retailer except as an article for sale, and a court might even take judicial notice of the fact that it is not otherwise used. Therefore, when it explodes in being used by the marksman no tracing back by evidence of intermediate handlers should be deemed necessary. A prima facie case would seem to be made by the marksman showing himself free from any negligence.

QUESTIONED INK MARKS—DETERMINING THE AGE OF INK MARKS.*

Introductory.—Considering that writing fluids of various kinds have been in common use for centuries, and that the spread of civilization has largely depended on them, it is remarkable how little definite knowledge has been gained regarding the inks so used. Because almost anybody could make some sort of a colored liquid which would pass for ink, it seems as though nobody thought it worth while (until very recently) to investigate the character and action of these colored liquids *after being used.* Consequently there is a great scarcity of serious literature on the subject, and that which does exist contains little or no information on some of the most important points.

As inks are the means by which the business of the world is conducted, and through which its records are preserved, it is, of course, important that the inks used should be of as lasting a quality as possible; but it surely is not of less importance to be able to determine whether or not these ink records are really authentic, and are really what they purport to be. Nevertheless, there has not been published anything of definite value bearing on the solution of the question of the age of a given ink writing;

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and presumably the subject has not even been carefully investigated, with such solution in view.

Scope of Article.—It is intended herein to consider this neglected problem of the age of writings; and the results set forth are based upon an extensive series of investigations, extending over a number of years, and made with the express purpose of acquiring reliable data bearing on this particular question.

It will be at once perceived that the ground covered includes the falsification of existing records (by alterations, interlineations, substitutions, etc.) as well as the making of false records in their entirety (as by writing them at one time and giving them a different date); such falsification sometimes also includes the question of the personal identity of the writer—his handwriting—but the author has elsewhere treated of that particular division of the subject; and such falsification sometimes also includes questions of typewriting—both as to the machine work and the ink used—but that is reserved for later discussion.

Elements Employed.—For the purposes of this paper, three elements enter into the production of a written document, to-wit: 1. The background or writing surface; 2. The marking instrument; and 3. The marking fluid.

1. The background. This is so generally paper, that such will be herein considered as the sole writing surface. *Theoretically,* paper consists of a mass of cellulose which has been first bleached and then colored to suit, and to which has been added some hardening substance to prevent the ink lines from spreading too much before they dry. *Actually,* it comprises also more or less impurities, and is more or less adulterated by "loading"; there may also be added adventitious substances getting on the paper after its manufacture, as a result of its later use and handling.

2. The marking instrument. In the present day and generation this is usually some kind of a metal point, which may be an ordinary detachable pen, or a so-called "fluid pencil," or a fountain pen.

3. The marking liquid. In color, this is usually either the so-called "black" or "red"; other colors are also occasionally found—particularly blue—which will be considered in detail in a subsequent paper. In character, the marking substances are usually the so-called "writing fluids" (which only develop their real color some time after being used in writing) or the so-called "inks" (which show most of their real color at once); and the latter class are either true solutions, or else merely fluids in which finely divided particles of color are held in suspension. There is, of course, a great variety in the chemical qualities of the marking substances with which we are dealing.

Factors to be Considered.—As the three elements mentioned must combine to produce a writing, and as still other agencies are also at work, there are necessarily many factors which must be taken into consideration in particular cases.

Stated generally, these factors include (*inter alia*): 1. The chemical condition of the paper at the point of writing; 2. The physical condition of the paper; 3. The chemical properties of the pen used in writing; 4. The mechanical action of the pen; 5. The chemical constitution of the ink; 6. The chemical condition of the ink; 7. The microscopic condition of same; 8. The color values and characteristics of the ink; 9. The exposure of the writing to light, air and moisture; 10. The artificial drying of the writing; 11. The presence of extraneous and foreign substances on the document; 12. The conditions under which the observations are made.

The observer in a particular case may be able to derive assistance from other factors relating to the binding of the document, or the paper or the printing or typewriting thereon, as well as to the identity of the writer or writing machine; but with none of these are we at present concerned.

Kinds of "Age" Questions.—While almost every case presented for investigation contains a problem differing in some respect from every other case, yet there are two natural classes into which all may be divided, and between which the line of demarcation is well defined.

In one class, the question under investigation is such that it can only be decided by determining the *actual date* of the writing itself, from an examination of the materials employed therein. For example, this situation exists where a document is questioned *in its entirety*.

In the other class, the matter to be determined can be settled by ascertaining the *relative dates* of the writings in different parts of the same document, by testing the materials used in the respective writings. An instance of this class is where only a *portion* of the writing on a given paper is questioned, and yet all of the writing purports to have been done at the same time. In such a case, the actual ages are generally of little importance, if the results show conclusively that the relative ages are either alike or different.

In each of these classes the examiner can have the benefit of aid from certain tests inapplicable to the other class; therefore each class may be said to have some advantages over the other class. Nevertheless, in practice it will be found that the first class calls for a much greater degree of skill than the second class; this is due to the fact that there has been such a paucity of reliable guideposts for the observer to follow; and this in turn is owing to the great dearth of investigation along this line.

Eras of Age.—It goes without saying that any investigation of the present character, in order to be valuable, must be based entirely on actual tests made on writings of which every condition surrounding and affecting their production, existence and history, is known to the investigator. Therefore no one person can contribute to the common fund of knowledge, such data covering an era of age longer than the period covered by such tests; this means at the outside, much less than a single lifetime.

Of course, any competent investigator may, by actual tests and investigation, learn much concerning writings older than the period of his tests, and such experience will be very valuable to the world; yet the information so gained can but rarely have the exactitude which is possible where all the conditions and factors are known.

Consequently, so far as the present discussion is concerned, writings are to be arbitrarily divided into four approximate areas of age: 1. Ancient—having been written over 150 years ago; 2. Old—of ages between 25 and 150 years; 3. Recent—between the ages of two weeks and 25 years; and 4. Fresh—not over two weeks old.

While the author has not neglected the Ancient and Old eras, he wishes to be understood as now considering only writings of the Recent and Fresh eras. At the same time, the results of his present investigation are so positive, and so consistent, that they would seem to point to general rules applicable to similar materials, whenever employed—at least up to the age when the inks have so far disintegrated that but one of the original constituents remains. Furthermore, he can say that he has actually found instances of apparent confirmation of many of these rules in writings at various points throughout the Old era, and even slightly beyond.

In the more distant eras it may be found that some of the tests require to be varied somewhat, or even that some new testing agencies must be substituted; but the subjects of the tests will most likely be found exhibiting in their behavior similar phenomena to the younger writings. Then again the investigator, as he gets back into the realm of ancient writings, will have the advantage of being able to add supplemental tests particularly applicable to such writings.

Classification of Ink Phenomena.—The changes occurring in ink marks, with the

lapse of time are, in character (a) mechanical; (b) chemical; and (c) as to color.

The mechanical changes are such as are involved in the absorption of the ink by the paper, or the spreading of the ink on the paper, immediately following its deposit on the paper; also the removal of portions of the ink from the paper by "blotting" pads before the writing dries, or by rubbing or falling off when the ink body has begun to disintegrate; also the flow of the ink at points where line-intersections occur.

The chemical changes are simply such as proceed from chemical separation or readjustment of the original constituents, or from chemical union with other substances. The color changes are just what the words imply, though, in writings made with so-called "colored" inks, they are not noticeable in any but comparatively old writings, and not at all in carbon black writings.

Now all of these changes may be actually under way at the same time, *or they may occur independently*. That is to say, the mechanical removal of part of the ink may be made in an instant, without necessarily effecting any chemical alteration, or (so far as colorimetric principles are concerned) any present change of color; so also there may be a chemical change occurring, *without necessarily effecting a color change at the same time;* but the color change *cannot* take place *without an accompanying simultaneous chemical change.*

Nature of the Ink Phenomena.—With regard to the mechanical changes in ink marks, where a part of the ink body has been removed from a fresh mark, or has spread unusually over the paper, the result is to leave a *thinner* layer of ink on the paper; it follows that this ink layer will be more readily accessible to the influences that cause color changes. Consequently, the subsequent color action of such thinner layer of ink will in some respects vary from the color action of the ink in a line from which none has been removed. And where lines cross each other, there is a vast deal of difference in the character of the resultant intersection, between lines that have been made nearly simultaneously, and lines made with a longer interval of time separating them.

Inks may be greatly changed chemically, and also (except in "colored" inks and carbon blacks) in color, even before they are placed on the paper in writing; but ordinarily most of the changes occur after the writing has been executed. At first there is more or less absorption and evaporation, causing a drying and gradual hardening of the ink film; then there follows a course of chemical action, continuing from the execution of the writing until its destruction, and involving the original substances occurring in the ink and paper, plus others derived from the writing instrument or atmosphere, or both. These chemical changes may or may not be accompanied by changes of color in the ink film; but if there be color changes, this action will vary according to the age of the writing. Furthermore, such color changes as do occur will be due to the action of light, and therefore will be *dependent upon the character, etc., of the light to which the ink has been exposed.*

Extraneous and accidental factors (some of which have already been referred to) may also have some effect on the ink action; but their presence can generally be detected and, when found, their effect must be taken into consideration in order to reach correct conclusions.

General Methods of Examination.—A microscopic examination is always necessary, and should be made by both reflected and transmitted light. A chemical test is always desirable, and sometimes is indispensable. A colorimetric test, also, is always desirable, and it may be absolutely essential. None of these tests will injure or destroy the writing, if done by a comptent person who is accustomed to making such examinations of *documents.*

Microscopic Tests.—By the use of a microscope, the optical appearance and condition of ink and paper, as well as the in-

fluence of the writing instrument, can be ascertained.

With regard to the paper, the trained observer can detect such alterations, impurities, and extraneous accretions as would not require a chemical test to disclose them; and he can obtain a pretty good idea as to whether or not there is anything there to affect the normal action of the ink.

Then, as to the ink itself, the trained examiner can form a rough judgment as to its general chemical character. He can learn its chemical condition when used, and when examined; its mechanical action with regard to the paper, and in some respects also its chemical action as to same; its condition as to fluidity, solid particles, preoxidation, disintegration, and often as to "provisional" coloring; in a general way, he can learn of its color at the time of the examination. Then, when he comes to a point of intersection, he can learn which stroke was first made, and how long thereafter it was when the second stroke was made; if not more than two weeks intervened, he would be able to determine this interval with considerable exactitude. Besides the foregoing, he would learn what (if anything) the writing instrument had contributed to the factors of change in the ink phenomena.

The combined results of such tests would, alone, enable the experienced investigator to fix approximately the relative and actual ages of the writings examined. In the case of crossed lines written within two weeks of each other, he could in most cases fix the interval with definite accuracy.

Chemical Tests.—In order to ascertain the actual age of a writing done with an ink of fixed color—*e. g.*, carbon black—chemical tests are absolutely necessary; in all other cases they are desirable.

Chemical tests for age are based entirely on the principle of the *degree of resistance* of the ink in question to the action of the reagent being used.* The necessity for testing the ink while on the document, and without injury to either writing or paper, at once removes from consideration most of the familiar processes and means of testing; and the necessity for actual measurement of the results still further confines the tests. The remaining available tests are such as must be used with unusual care and great caution.

After ink has been deposited on the paper, it quickly dries—principally by absorption, but partly by evaporation, of the fluid; from this time on, the normal action of the ink film, as time passes, is (generally) to offer gradually increasing resistance to appropriate solvent or loosening agents. This phenomenon continues until the disintegration of the ink; therefore, up to this point, the tests applied must be such as will overcome the cohesion of the particles of the now solid ink; but only those reagents can then be used which vary in the speed of their action *consistently*, according to the age of the ink under investigation. Such reagents, therefore, constitute one series of tests, and are applicable to the inks being considered, until and unless disintegration has taken place.

But there comes a time in the lives of all these inks when the original mass has become so far changed, by the loss of its vegetable or animal (or both) constituents, that the substance left behind has hardly the semblance of an ink; this is disintegration, and is usually evidenced by a separation of the ink solids, and usually also by a radical change of the ink color. Disintegration may be delayed for generations or for centuries, but sooner or later it comes to all; it does not come, however, until far beyond the eras of age herein being considered.

Determination of Constituents.—The first step for the investigator, is to test the quality of the paper, to such extent as will show him what factors it contains that might have an influence on normal ink action. Then he must test the ink qualitatively, in order to ascertain what its normal action would be, and to what extent it would be

affected by, or might be susceptible to, the paper factors and extraneous influences.

Upon the completion of these tests he will be in a position to choose the appropriate reagents, and to understand the results of their action.

Ammonia Solution.—Heretofore, ammonia has practically been regarded as the only available substance for such testing. In appropriate cases this has a double effect—it acts as a solvent, and it affects the color of the ink film; of these only the first has heretofore been made use of for the present purpose. Its action in both respects is practically independent of the question of the exposure of the writing to light.

With this reagent, in iron ink, the mere lapse of time, of itself, causes a gradual difference in the solubility of the ink film, and in the character of the color stain. Pre-oxidation of the ink affects both solubility and stain.

In carbon ink, time itself causes similar gradual variations in solubility, but, of course does not affect its color; and the element of pre-oxidation need not ordinarily be considered.

In logwood and aniline inks, on the other hand, neither light exposure, nor lapse of time, nor pre-oxidation, materially affects the solubility of the ink film; therefore, as to such, ammonia tests are worthless, in determining questions of age.

The Hydrocarbons.—The author has found among the hydrocarbons several additional reagents.

With one of these, the action is as follows: In iron inks the speed of the response is affected by pre-oxidation, as well as by exposure to light; but in carbon, logwood and aniline inks, the light exposure has no effect.

With another, the action is but slightly different: In iron inks, the speed is affected slightly by pre-oxidation, but *not* by exposure to the light; and light exposure also has no influence on the other kinds of ink mentioned.

In still another hydrocarbon, we have a reagent whose action, as to some inks, is two-fold—as solvent or loosening agent, and as changing the color. Its reactions are as follows: With iron ink the speed and the resulting color change are varied by pre-oxidation, and by light exposure; but light exposure has no influence on carbon, logwood, or aniline inks.

The Mineral Acids.—For iron ink, the author has found among the mineral acids another valuable reagent. Its action is judged by its bleaching powers, which vary with the age of the writing, and which must be properly measured.

Chemical Resume.—From the foregoing chemical tests it will be seen that the light exposure has no effect on the solubility of any except iron inks; and with them it has none, as against three out of the five reagents. On the other hand, pre-oxidation of the ink generally has considerable influence on its solubility. Furthermore, the old ammonia test is only valuable as to iron and carbon inks, and the new ammonia, and new mineral acid, tests apply to only iron inks; while the new hydrocarbon tests apply to practically all of the inks named.

Colorimetric Tests.—With regard to color changes, inks of so-called fixed or permanent colors (*e. g.*, carbon black, red, blue, etc.) are not to be covered by this article, but will be reserved for a later paper. We are here dealing with the so-called "black" inks, the shades of which are variously known as blue-black, green-black, purple-black and violet-black. Upon exposure to light, all of these classes change their color more or less rapidly, and to a greater or less degree, with the flight of time; in quality, they include the various iron and logwood inks and some of the aniline inks.

The most remarkable of their phenomena is that the color change is dependent, not on chemical change, and not on lapse of time merely, but on *exposure to light.* As light is composed of different colored rays, which may be separated and segregated, the ink may be exposed to none, or some, or all,

of these rays, and the effect will vary accordingly. If absolutely no rays of light reach the ink—a condition practically never found in actual work—the color change will be totally suspended during the time such condition is maintained. If, however, the writing be only guarded as to certain of the light rays, then the change will be suspended as to only such rays.

After writing has been exposed to all of the rays of light—as is ordinarily the case—the color change in the ink commences to take place very rapidly; soon it begins to retard more and more, throughout the subsequent life of the paper. The period of most rapid change may be roughly stated to be the first two weeks after exposure to light.

If, therefore, the experienced investigator measures the *rate of speed* of this changing of color, he has a certain index to the duration of the interval of exposure of the ink measured. But if the writing had been for a time guarded from absolutely all light, then that very unlikely fact would be disclosed by the comparison of the colorimetric tests with the microscopic and chemical tests; such comparison would also afford the data from which to determine the duration of such total suspension of color change. Consequently, whether the writing had been protected or not, the examiner has the data whereby to fix its age.

If, however, the investigator finds that the color is changing more rapidly as to one portion of rays of light than as to the rest of the rays, he will know that the writing has been protected as to the one set of rays, but not as to the others; this will afford him an indication as to the treatment of the document prior to his examination of it, and also an index to the age of the writing itself.

The general character of the change in the color of the inks alluded to, may be expressed in the one word "darkening," for a certain length of time; but after a given age has been reached, the changing process is reversed in character, and then becomes "fading," which continues right on in its slow changing action, until complete disintegration or destruction of the ink writing. Strange as it may seem, the turning-point from darkening to fading is very often reached in from two to three years after the writing has been exposed to the light, depending on the kind of ink used; and if the writing was originally dried with a "blotter," the fading will commence rather sooner.

Of course, the fading process is relatively slower than that of darkening, because the ink is always getting further from the point of its exposure to light. It also goes without saying, that color values can only be measured by the use of appropriate instruments.

It follows that, as the colorimetric determination of age depends on the rate of speed of changes, it must be based on at least two sets of observations, made at a sufficient length of intervening time to allow for some appreciable change to have taken place between the two dates.

The Conclusion and the Moral.—From what has been said, it will be seen that the age of an ink writing need no longer be left to mere conjecture, or to the verbal testimony of interested parties; neither need it be left to a more or less trained guess, based on a misused magnifying glass and misunderstood bottle of ammonia. Now, a person who understands the ink phenomena uses his microscope with fuller effect, and *measures* the results of a series of chemical and colorimetric tests; this done, he has the "life history" of the particular ink mark before him, and he needs but to refer to the index of experience to find the birth date of the writing under investigation.

There is no use in deceiving ourselves into the belief that there is only a negligible quantity of fraudulent documents being produced. The necessities of life bear so heavily on people in these days of advanced civilization, and the temptation is so strong that such crime is rampant in the world to-day.

We cannot stop the practice, but we can render the ultimate success of its efforts unlikely, if we but pay attention to the moral to be drawn from what has gone before:—Choose that ink whose phenomena are the most defined, the best known, and the most readily capable of full testing,—and whose basic constituents will retain the longest and the tightest hold on the paper, even though their chemical constitution may become changed; then, as an additional safeguard, for monetary instruments use more than one such ink—(of course, not mixed),—whose phenomena are as widely different as possible.

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PROPOSED LEGISLATION IN EUROPE.

French Labor Legislation.—As a result of the great French Railroad strike in 1910, the French Ministry has introduced in the Chamber of Deputies three bills dealing with such situations.

The first is merely a penal law, fixing penalties for employes of the actual train service on railroads who, without good reason, refuse to do the work for which they were employed.

The second deals with the so-called "sabotage" or indiscriminate destruction of property. It refers, not only to railroads, but to all public activities, industrial and commercial establishments. Penalties are thereby fixed for anybody who, with the intention of causing an interruption in the particular activity in question, destroys and makes of no use things required for the running thereof. If the guilty person be an employe of the particular activity, the property of which has been destroyed, a higher punishment is to be inflicted.

The third is by far the most important, but deals with railroads only. It first proposes, that the rules of discipline, promotion and dismissal of employes shall be approved by the Minister of Transportation, who, if necessary, shall consult the Council of State, and then fix the rules himself.

The second set of rules has for its purpose the settling of disputes between employers and employes. It creates standing committees of both parties, with stated conferences to discuss all differences of opinion that have arisen. These refer to each separate factory or company. For more general disputes inside a certain district, the law provides district committees, whose business it is to discuss and try to settle such disputes. For disputes affecting more than one district or the whole country, similar central committees are provided.

If a compromise is not effected in either of these ways, the case is taken before a special court created for the purpose. Each of the parties elect two members thereof, and these again elect one or three others. If these cannot agree, the representatives of each side elect one more member; these have to be selected from a list of fifteen, made up by the Chamber of Deputies (10) and the Senate (5). The two so selected elect a final arbitrator; when these take their seats, the one or three arbitrators, formerly selected by the representatives of the parties, cease to act.

This court decides the case, and its decision becomes binding at once, except where it calls for expenses from the state finances; in such case it is held in abeyance in so far until the necessary appropriation has been made. In case the decision should impose additional financial burdens on the railroad, the court is given the authority, and the duty imposed upon it, to indicate in what way—by increase in fares, for instance—the additional expense may be met, if found necessary.

The power of execution is given to the Minister of Transportation. As to the employer, the Minister can go as far as to revoke its charter or license, and as to employes, they can be dismissed at once.

It is forbidden the trade unions and similar bodies to request the employes to strike, and offences of this character are punished by fines and imprisonment, on a progressive scale in case of repeated offences, and especially when it is done while a court of arbitration is sitting; if nothing of this kind proves effective, the union may be dissolved.

These bills, as it will be seen, have a double purpose, viz: to suppress industrial disturbances, riots and destruction of property, and to reach equitable settlements of the disputes. The most noteworthy characteristic of the law seems to be, however, its square recognition of the unions as representatives of the employes, with whom the employers are forced to deal.

Austrian Legislation Regulating Practice of Law.—The Austrian Minister of Justice has introduced three bills, one regulating the practice of law by advocates, one about the practice of notaries and one about "Winkelschreiberei" (illicit practice of law, shysters,

unauthorized scriveners, etc.) Austria is partly under the notarial system, and certain kinds of practice which with us would be classed as law practice, are there reserved for notaries. The callings of advocate and notary cannot be combined, except in small out-of-the-way places. "Winkelschreiberei" is forbidden and made punishable, and Judges are authorized, where pleadings clearly are the products of such gentry, to throw them out, eventually after having allowed a certain short time in which to replace them by such as have been prepared by a duly authorized advocate.

New Penal Codes for Germany and Servia.—Both in Germany and in Servia there are sitting large commissions preparing new penal codes. Both of them seem to have difficulty in defining the general divisions among penal offences. The Germans intend to divide them into "Verbrechen," "Vergehen" and "Uebertretungen," which names probably best can be translated as "crimes," "misdemeanors" and "infringements" (of penal laws). But to find right lines of cleavage between them, seems to be rather impossible. The German commission has finally found it necessary to adopt a purely formal rule of differentiation. It defines "Verbrechen" as such acts which are punishable by death, penitentiary, or "shutting in" for more than five years. "Vergehen" as such acts punishable by imprisonment, "shutting in" until five years, or fines of more than 500 marks; "Uebertretungen" as such which are punishable by "haft" or fines of not more than 500 marks. The commission proposes four kinds of deprivation of liberty—namely, "zuchthaus" (penitentiary), "gefanuis" (imprisonment), "einschlieszung" (shutting in), and "haft" (detention). From the information before us, it is not possible to say distinctly where the lines of demarcation between the latter three are drawn.

The task of separation, then, must be taken up seriatim, as each separate offense is enumerated, and the danger of casuistry becomes imminent.

The Serviants divide the transgressions into two classes only—namely, "verbrechen" and "uebertretungen"—but they do not appear to have reached any satisfactory definitions, either.

The reports of both commissions are of interest on account of the ways in which they expect to treat juvenile offenders; where they fix the boundaries between full and limited responsibility; rules for conditional release; the recognition, not only of self-defense, but of "states of necessity," as well as elaborations of the rules for concurrence of crimes. To some of these points we may return later.

AXEL TEISEN.

TRIAL BY JURY—ITS REGENERATION.

For a long time, trial by jury has been under fire—a fire of blank cartridges. The past decade has been prolific of theories and opinions looking to a remodeling of the jury system—on the part of some extremists, harking to the abolition of a considerable share of it.

But despite all this philosophizing, the jury, as an institution, remains substantially unaltered. Of late, a few of the weapons aimed against it, have been shotted.

A bill introduced at the present session of the New York Legislature, is designed to make a majority verdict, instead of a unanimous verdict, all that is necessary in certain cases.

A similar question has come up before the Ohio Constitutional Convention. These indications are sufficient to show that dissatisfaction with the jury system is not merely theoretic.

We are on the eve of changes—the point is how extensive these alterations shall be, and whether they are to be rightly directed.

Jury Not a Dominant Factor in Present Day Litigation.—One of the leading facts to be reckoned on is, that trial by jury, in the actual administration of the courts, is not as dominant a factor as it is popularly supposed to be. Compared with the total amount of litigation in the United States, the number of issues submitted to juries are rather surprisingly few.

At an early epoch in the development of the jury system, it was seen that it would be impossible to leave all questions of fact to abide the result of a jury trial. The vast field of equity, jurisprudence—that function of the law which directly operates on property, foreclosing mortgages, partitioning estates, granting injunctions, compelling certain acts and forbidding otners—is almost exclusively the province of Juages, or of those plenipotentiaries of Judges—Referees.

So, in that legal situation, technically known as a "long account," the jury duty is relegated to a referee. It is evident, that when contesting parties, have bills against each other, each bill consisting of many items, and a majority of these items disputed, each specification constitutes a separate issue. Trial of the merits of every item is, in truth, trial of a distinct case. Any lawsuit of that character

would keep a jury sitting indefinitely. Sheer limitations of time, and the need of keeping within the bounds of possibility, have compelled the delegation to referees of the juryman's essential business, of deciding on disputed questions of fact.

The Failure of Trial by Referee to Supplant Trial by Jury.—Though censures of the referee device are not so frequent nor so loud as criticisms of the faults and blunders of jurors, the reference method is previous to attacks fully as well justified as anything which is urged against juries. Referees are supposably endowed with authority for three purposes:

(1.) To save time.

(2.) To save expense.

(3.) To utilize the services of trained minds in disposing of matters in controversy.

It cannot be said that the referee system is a success in any of these objects except the last. Assuming that the referee is impartial and capable—and this may reasonably be assumed in more instances than those in which the contrary assertion would be justified—litigants, when they hand over their controversies to a referee, do secure legal ability, and a judgment experienced in dealing with propositions of fact.

But, do they save time? Do they prevent expense?

The long-drawn-out duration of reference trials which ought to be quickly ended, is one of the flagrant scandals of the American bar. We say bar rather than bench, for the bar is more to blame. Conduct of lawsuits before referees, falls upon the counsel immediately concerned. The laziness of some lawyer, his "previous engagements," some fanciful advantage which he imagines may be gained by delay, or too-willing concession to the opposing counsel who is skirmishing for delay himself —all these protract references to an outrageous length, heap up expenses, and nip in the bud the growtn of justice.

It is not uncommon to see a reference called adjourned, and adjourned again and again, the referee charging from $10 to $25 for services requiring no skill, and consuming only a few minutes. For "the law does not recognize parts of days"—if the referee is there, no matter how short the sitting, he has done a day's work. Consequently, the bills for many references are as exorbitant as the sluggardliness of procedure is discouraging. The reference, that, "like a wounded snake, drags its slow length along," is one of the prime causes of that failure of justice which is a topic of complaint all over the country.

Abolition of the Unanimity Rule in Jury Verdicts.—The danger in remodeling the institution of trial by jury, consists chiefly in the liability to abolish privileges which it has taken centuries for the people to acquire, and which it might take centuries to restore, if they were once lost. The subject should be approached with caution, and be handled with conservatism.

But all this is far from saying that jury methods, as they exist today, should be made a fetich. There is opportunity for improvement. It seems to me, that the most practical, and the least perilous change would be modification of the rule which in all cases makes unanimity of the jury necessary for a verdict. This suggestion I believe should apply mostly, and perhaps exclusively, to civil cases.

To say that a man may be convicted of a crime, even of the minor forms of crime classed under the head of "misdemeanors," by anything less than a unanimous verdict of a jury of his peers, would be to assert a perilous precedent.

To convict a defendant of felony, by anything short of unanimous consent of the twelve minds in the jury box, ought not to be considered for a moment.

But the cause of justice would not suffer, but would be assisted, if a majority opinion—say of three-quarters of the jury—were allowed to prevail in most civil cases.

It would be easy enough to lay down exceptions to the rule, which should be sufficient for all genuine needs.

In lawsuits of great magnitude, or of peculiar difficulty, the old requirement of a unanimous verdict might be maintained.

Partial abolition of the unanimity rule, would greatly facilitate the disposal of civil litigation of secondary and minor importance. It would destroy the power of a merely stubborn juror, to "hang" a verdict, thus causing a multiplicity of trials. It would in no way encroach on the sphere of jury trials—it would change the method without altering the substance. It would be consonant with the institutions of this country, where except with juries, unanimity has no standing, and the will of the majority is law.

Does it seem reasonable that unanimity of a jury must be requisite, even in the paltriest civil case, when Congress and the Legislatures make laws by majorities, and even amendment of the Constitution can be accomplished by act of the majority?—*Burr, in National Monthly.*

EXECUTORS AND ADMINISTRATORS—FRAUDULENT CONVEYANCES.

PERRY v. REYNOLDS.

Supreme Court of Georgia. January 12, 1912.

73 S. E. 656.

(Syllabus by the Court.)

Where one, to defraud his creditors, conveys and transfers his property to another, his administrator cannot maintain an equitable action against the transferee to get possession of the property for the purpose of paying the creditors of the decedent.

BECK, J.: This petition was brought by E. J. Perry, as administrator of Mrs. M. J. Reynolds, against J. E. Reynolds, guardian ad litem of James Irwin Reynolds. It seeks to have a deed, executed by the said Mrs. Reynolds to the said James Irwin Reynolds, her grandson, canceled, and other equitable relief.

The petitioner bases his right to the relief sought upon two grounds: The first is that the deed was executed for a totally inadequate consideration, and was of the nature of a voluntary conveyance for love and affection; and that, as the administrator of his intestate, he is entitled to recover possession of the land, which is now in the possession of the defendant, in order that he may sell the same for the purpose of paying the valid demands of creditors against the estate of his intestate, the intestate being insolvent at the time of her death, unless the deed referred to be treated as invalid, and the property be decreed to be a part of her estate. The other ground is that the decedent was, at the time of the execution of the deed, "mentally incapable of executing said conveyance, by reason of her long-continued illness and the infirmities of age; and that at the time said deed is purported to have been made she was totally incapacitated and of such unsound mind that she was unable to make a legal and valid conveyance." The plaintiff prayed that, should the court find upon the trial that any consideration whatever was paid by the grantee in the deed, "then the equity over what was actually paid be sold for the benefit of the estate." Demurrers, both general and special, were filed. The court did not pass upon the special demurrers, but granted an order sustaining in terms the general demurrer.

(1) 1. So much of the petition as may have for its purpose the setting aside of the deed, because it was executed upon an inadequate consideration, or a consideration merely of love and affection, and that for this reason the administrator is entitled to recover the land for the purpose of bringing the same to sale, in order that the debts against the estate of the decedent may be paid with the proceeds, was clearly open to demurrer. An administrator cannot recover land which had been conveyed by his intestate, though the conveyance was a voluntary deed and without consideration, merely for the purpose of subjecting the property thus conveyed to the demands of creditors against the estate. In such an action, he stands in no better situation than his intestate would have stood had she, in her lifetime, brought an action to recover the property for the purpose of using it in paying debts which might have existed against her. This precise question was decided by this court in the case of Crosby v. De Graffenreid, 19 Ga. 290, where it was said: "A., to defraud his creditors, transfers his property to B., and dies. His administrator files a bill against B. to get possession of the property, that he may, with it, pay the creditors. Held, that there is no equity in the bill."

(2) 2. But if, as alleged in the petition, Mrs. M. J. Reynolds was, because of mental unsoundness, incapable of contracting at the time of the execution of the deed, after her death, her personal representative had the right to bring this petition for the purpose of setting aside the conveyance. Orr v. Equitable Mortgage Co., 107 Ga. 499, 33 S. E. 708. And if the conveyance in the present case was not purely for love and affection, but some consideration, though inadequate, was paid, a decree may be molded, under the allegations of this petition and the prayers thereof, that would protect any rights which the grantee may have as to the consideration which he may have actually paid for the conveyance.

Judgment reversed. All the Justices concur, except Hill, J., not presiding.

NOTE.—*Action by Administrator to Set Aside Fraudulent Conveyance by Decedent.*—Many courts hold to the rule announced by the principal case, but there is a strong current of authority the other way—at least where the rights of creditors thus require. The theory in its favor is that an administrator is primarily a trustee for creditors and that practical application of administration statutes requires the exercise of such a power. We submit extracts from some decisions this way.

In Wright v. Holmes, 100 Me. 508, 62 Atl. 507, 3 L. R. A. (N. S.) 769, it was said: "The title to an intestate's personal estate does not pass

to his distributees, except through proper probate administration. Distribution or the right to distribution presupposes administration. The distributee's share is his proportionate part of whatever fund is left, after the debts and expenses of administration have been paid. The distributee is not entitled to a share of the specific rights and credits and goods and chattels which came into the administrator's hands, but only to a share of the fund produced by administering them; that is, by reducing them to money."

This quoted language follows after a ruling that an administrator may bring trover in a case, where no mention is made of debts and the court assumed it was brought for the benefit of a statutory distributee, and also where it seems there was no statute specifically pointing any duty of administrators as to property fraudulently conveyed. It shows that probably the ruling would be different as to real property—at least without it appearing that it was needed to pay debts. This case goes further than those which follow and turns the technical point in cases supporting the principal case the other way.

In Marlow v. Walker, 115 Iowa 238, 88 N. W. 452, 91 Am. St. Rep. 158, the question is not greatly discussed, the opinion merely saying: "It is well-settled that the administrator of an estate may maintain an action against decedent's grantee to set aside a conveyance, if in fraud of decedent's creditors. Cooley v. Brown, 30 Iowa, 470; Parker v. Flagg, 127 Mass. 28; 1 Woerner's Amer. Law of Administration, 630; Wait on Fraud. Conv., secs. 112, 113. It is not necessary, in support of such an action, that the creditors have already reduced their claims to judgment. Prentiss v. Bowden, 145 N. Y. 342, 40 N. E. 13."

In Cooley v. Brown, *supra*, approved in the Marlow case, it is said: "Ordinarily it must be true that an administrator can only maintain such actions as the intestate might if living. This must be invariably so as to all actions for the enforcement of all rights grounded upon the inheritance. So far as the administrator represents the heirs and the actions brought by him are to secure their rights or interests, he must be limited to such as the decedent himself might have maintained. But under our general statutes relating to the distribution of estates and the duties of administrators, the latter are charged with certain trusts, in favor of the creditors of the estate. They are required to collect the assets and pay them over to the creditors, whatever ought to be applied to the payment of the debts, ought to be recoverable by the administrator, representing the rights and interests of the creditors, unless property voluntarily and fraudulently conveyed by the decedent can be thus reached by the adminsistrator, the creditors must either go without remedy, or they must be permitted to bring actions in their own names, thus involving a multiplicity of suits and interfering with the singleness of the administration."

Prentiss v. Bowden, *supra*, says the "whole theory of administration rests upon the idea that when a man dies his estate shall answer to his creditors equally and without preference and the surrogate is purposely made master of the situation to prevent inequality of payment," and that therefore either the administrator, or a creditor in behalf of himself and others, where the administrator refuses, may bring suit to set aside a fraudulent conveyance, though the creditors have not reduced their claims to judgment, contrary to the ordinary rule in such suits.

In Mutual L. Ins. Co. v. Farmers & M. Nat. Bank, 173 Fed. (C. C.) 390, there is quite an elaborate discussion to ascertain the Ohio rule on this question. The opinion says: "At common law and under the English statutes, particularly 13 Eliz., c. 5, a transfer of property in fraud of creditors is void as to them, but is binding between the parties and on the heirs, legatees and devisees of the transferror, and consequently the personal representative of a decedent cannot, where the common law rule prevails or such statutes control, impeach the conveyance of his intestate on the ground of fraud. * * * In view of the Ohio statutes, does the common law rule still prevail?

The case related to a conveyance of real estate and an elaborate consideration of a large number of Ohio cases induced the conclusion that "by virtue of the powers conferred on an administrator by the general administration act" of Ohio, he was entitled where the rights of creditors require to bring suit to set aside a fraudulent conveyance. The court observed that: "Such a practice is salutary. The splitting up of the administration of estates between creditors and personal representatives, and the confusion resulting therefrom, a situation not contemplated by the general administration act, is obviated. It quite as much advances the remedy of creditors, avoids a multiplicity of suits and reduces costs, as does the administrator's right to recover fraudulently conveyed real estate," this observation being made in discussing the right to recover personal property likewise conveyed.

Many of the states provide by statute for an administrator bringing suits as to such conveyances, but it may be said that independently of their so providing there seems an increasingly strong tendency in decision against what is called the common law rule, preventing an administrator for any reason attacking his decedent's conveyance. Schouler on Executors, sec. 297, and 3 Williams on Executors (7 Am. Ed.) 130, support the right of the administrator to bring the suit. For cases *pro* and *con* on this subject, see 11 Am. & Eng. Encys. 977. See also 20 Cyc. 433.

C.

HUMOR OF THE LAW.

TWO GUILTY.

"Thomas," said mother, severely, "some one has taken a big piece of ginger-cake out of the pantry."

Tommy blushed guiltily.

"O, Thomas," she exclaimed, "I didn't think it was in you!"

"It ain't all," replied Tommy, "part of it's in Elsie."—National Monthly.

EASY.

Judge—"You certainly do not expect the court to take this alibi as evidence."

Prisoner—"If that won't do, judge, I can give you another."—Fliegende Blaetter.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Adverse Possession**—Basis of Title.—Where a judgment of the district court determined that a party in possession of land had no claim therein, his possession could not be adverse to the true owner so as to ripen into a title, although an appeal had been taken from the judgment in which no final decree was ever entered.—Kelley v. Chicago, B. & Q. R. Co., Iowa, 134 N. W. 566.

2. **Appearance**—Motion to Quash—Defendant held to have entered a general appearance, by moving to quash service of process on grounds going to the court's jurisdiction of the subject-matter.—State ex rel. Pacific Mut. Life Ins. Range Co., Mo., 143 S. W. 549.

3. **Assault and Battery**—Execution of Writ.—Plaintiff in replevin did not assume liability for an assault by the constable or his servants in executing the writ.—Healy v. Wrought Iron Range Co., Mo. 143 S. W. 549.

4. **Bankruptcy**—Conditional Sale.—A conditional sale contract, antedating Act Cong. June 25, 1910, amending Bankr. Act July 1, 1898, § 47a (2), held not invalidated by such act, as against the buyer's trustee in bankruptcy.—Arctic Ice Mach. Co. v. Armstrong County Trust Co., C. C. A. 192 Fed. 114.

5——Conditional Sale.—That a conditional seller of an ice machine to a bankrupt instituted, but did not prosecute the judgment, proceedings for the establishment of a mechanic's lien, did not estop it to claim its right to reclaim the machine in bankruptcy.—Arctic Ice Mach. Co. v. Armstrong County Trust Co., U. S. C. C. A., 192 Fed. 114.

6.——Duty of Bankrupt.—It is incumbent on a bankrupt in involuntary as well as in voluntary proceedings, if he desires to procure a discharge, to take all proper steps to expedite the proceedings.—In re Wollowitz, C. C. A., 192 Fed. 105.

7.——Referees—A referee in bankruptcy has jurisdiction to pass upon the liability of an officer of the bankrupt to the estate in bankruptcy.—Bilder v. Ellis, 133 N. Y. Supp. 425.

8.——State Court.—A pending suit in a state court against a bankrupt to set aside a conveyance of property is not within Bankr. Act, the court of bankruptcy has no power to stay such suit.—In re United Wireless Telegraph Co., U. S. D. C., 192 Fed. 238.

9. **Banks and Banking**—Lien on Shares.—Statutory lien of bank on stock of shareholder for loan to him with knowledge of prior pledge of the stock held subsequent to that of the pledgee of the stock.—Ardmore State Bank v. Mason, Okla., 120 Pac. 1080.

10 **Bills and Notes**—Holder for Value.—It is no defense to a voucher draft, after it has been negotiated, that the original payees were about to leave without paying their laborers for work done by the payees for the drawer.—Val Blatz Brewing Co. v. Interstate Ice & Cold Storage Co., Mo., 143 S. W. 542.

11. **Boundaries**—Establishing.—A boundary line may be established by agreement, regardless of the true government line.—Klay v. Kurvink, Iowa, 134 N. W. 633.

12. **Brokers**—Subagent.—Broker employing subagent held liable for commission, though owner refuses to ratify sale, or is unable to make good title.—Reasoner v. Yates, Nebr., 134 N. W. 651.

13. **Carriers of Goods**—Parties—Buyer of coal which was shipped to the seller's order, with directions to notify the buyer, held not entitled to recover of the carrier for loss occurring before the buyer received the bill of lading.—St. Louis & S. F. R. Co. v. Allen, Okla., 120 Pac. 1090.

14. **Carriers of Passengers**—Conductor.—The conductor of a train is charged with caring for the safety of passengers, and has a certain amount of authority over them, and if, within the scope of his duty, he fails to take proper care for their safety, the carrier is liable.—Newman v. Chicago, B. & Q. R. Co., Iowa, 134 N. W. 585.

15 **Certiorari**—Remedy.—Petition for new trial, and not certiorari, is the proper remedy against a decree procured on false and fraudulent testimony.—Miller v. Kramer, Iowa, 134 N. W. 538.

16. **Champerty and Maintenance.**—Agreements.—An agreement that a suit may not be settled without the consent of attorneys employed to prosecute held champertous.—Kauffman v. Phillips, Iowa, 134 N. W. 575.

17. **Chattel Mortgages**—Priority of Lien.—A chattel mortgage, properly filed, is superior to the lien of a subsequent writ.—Freeman v. Friedman, 133 N. Y. Supp. 458.

18. **Commerce**—State Legislation.—A state statute, regulating the relation of common car-

riers to their employes, is applicable to interstate commerce until Congress has acted upon the same subject.—Freeman v. Swan, Tex., 143 S. W. 724.

19. **Conspiracy**—Civil Action.—A civil action for conspiracy will not lie for merely inducing another to break his contract unless direct fraud or coercion is used.—Sleeper v. Baker, N. D., 134 N. W. 716.

20. **Contracts**—Consideration.—An agreement between debtor, creditor, and trustee of debtor, by which trustee was to pay debt out of trust property, held based upon a sufficient consideration.—Schumacher v. Dolan, Iowa, 134 N. W. 624.

21.——Construction.—General or indefinite terms contained in a contract may be extended or restricted by the circumstances surrounding its execution.—W. B. Saunders Co. v. Ducker, Md., 82 Atl. 154.

22.——Meeting of Minds.—To constitute a contract, the minds of the parties must meet, and they must assent to the same thing in the same sense.—Foshier v. Fetzer, Iowa, 134 N. W. 556.

23. **Corporations**—Business Contracts.—The Illinois statute regulating foreign corporations applies to business contracts only, and does not prevent a foreign corporation, not having complied with the law, from taking an assignment of a lease of property in Illinois.—Ferkel v. Columbia Clay Works, C. C. A., 192 Fed. 119.

24.——Situs of Stock.—The situs of certificates of stock for purposes of the jurisdiction of the court held the domicile of the corporation.—Gamble v. Dawson, Wash., 120 Pac. 1060.

25.——Title to Property.—The legal title to corporate property is in the corporation, but the beneficial interest belongs to the stockholders.—State ex rel. Campbell v. Brinkop, Mo., 143 S. W. 444.

26. **Courts**—Res Judicata.—The judicial construction placed by the court on wills in a suit for their construction held to fix the law of the wills in a subsequent suit for their construction.—Allen v. Davies, Conn., 82 Atl. 189.

27. **Criminal Evidence**—Conspirators.—In a prosecution for murder, evidence of declarations of fellow conspirators immediately before the killing held admissib.e.—Hendrickson v. Commonwealth, Ky., 143 S. W. 433.

28. **Criminal Trial**—Former Acquittal.—Under Pen. Code 1895, art. 846, a previous trial for burglary does not prevent a prosecution for larceny of the property, claimed to have been taken in the burglary.—Newton v. State, Tex., 143 S. W. 638.

29.——Former Jeopardy.—A person who has been put in jeopardy for an offense which includes other offenses has been put in jeopardy as to all included offenses.—Commonwealth v. Browning, Ky., 143 S. W. 407.

30.——Severance.—The granting or denial of a motion for a separate trial by one of a number of defendants jointly indicted for conspiracy is within the discretion of the court.—Heike v. United States, U. S. C. C. A., 192 Fed. 83.

31. **Damages**—Loss of Earnings.—Recovery for personal injury may include compensation for loss of earnings in a business dependent upon personal services.—Walsh v. New York Cent. & H. R. R. Co., N. Y., 97 N. E. 408.

32. **Death**—Measure of Damages.—That a minor daughter married after the death of her mother, resulting from wrongful act, would not prevent the daughter from recovering such damages as she sustained before her marriage.—Texas & N. O. R. Co. v. Mills, Tex., 143 S. W. 690.

33. **Dedication**—Acceptance.—Act of a city in granting a right to occupy a street held to constitute acceptance of a dedication of the street, or to be evidence of a prior acceptance.—Baker v. Chicago, R. I. & P. Ry. Co., Iowa, 134 N. W. 587.

34. **Deeds**—Construction.—Neither the habendum clause nor the covenant following the habendum can enlarge the estate granted. Resort may be had to these clauses for purposes of construction.—De Goosh v. Baldwin & Russ, Vt., 82 Atl. 182.

35.——Habendum Clause.—Technical words in the habendum clause importing a fee must yield to the clause following the covenant of general warranty, limiting the interest of the grantee to a life estate.—Wilson v. Moore, Ky., 143 S. W. 431.

36. **Divorce**—Alimony.—That, pending an appeal in a divorce case, the wife remarried does not deprive her of the right to temporary alimony awarded below.—Arment v. Arment, Iowa, 134 N. E. 616.

37.——Desertion.—To interrupt running of the statutory period of desertion, a husband's offer to renew cohabitation must be free from improper qualifications and conditions.—Arment v. Arment, Iowa, 134 N. W. 616.

38.——Separation.—The conduct of the offending spouse may be such that the other will be justified in not objecting to a separation.—Wright v. Wright, Tex., 143 S. W. 720.

39.——Setting Aside Decree.—Divorce in favor of wife set aside as fraudulently procured even after the wife's death where the husband's property rights were affected.—Clay v. Robertson, Okla., 120 Pac. 1102.

40. **Equity**—Jurisdiction.—The rule that, when equity has obtained jurisdiction of a cause, it will retain it and do complete justice, does not authorize a court of equity which has obtained jurisdiction of one cause to assume jurisdiction over an entirely different cause of action set up by a defendant against a codefendant.—Fulton v. Fisher, Mo., 143 S. W. 438.

41. **Estoppel**—Mortgagee.—A wife obtaining a mortgage on the stock of goods of her husband held estopped from asserting a claim to the stock.—Pool v. Stephenson, Ky., 143 S. W. 419.

42. **Evidence**—Admissions.—In a personal injury action, a complaint previously filed against another railroad company charging that its negligence solely caused the accident held competent as an admission, but not conclusive against plaintiff's right to recover.—Walsh v. New York Cent. & H. R. R. Co., N. Y., 97 N. E. 408.

43.——Admissibility.—Testimony showing how many building lots a large tract of land can be divided into and what such lots could be sold for is too uncertain and speculative as a basis for the valuation of the tract as a whole.—Spring Valley Waterworks v. City and County of San Francisco, U. S. C. C., 192 Fed. 137.

44.——Secondary Evidence.—Carbon copy of letter held properly received in evidence, where a notice was served upon defendant to produce it; and it was stated that they were unable to find it.—Reasoner v. Yates, Nebr., 134 N. W. 651.

45. **Execution**—Presumption.—The court will presume, in the absence of a contrary showing, that an officer returning an execution, returned it in time.—Ex parte Hunt, Vt., 82 Atl. 178.

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